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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re R.S., et al., Persons Coming Under
the Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

CHRISTINE W.,

Defendant and Appellant.

F072197

(Fresno Super. Ct. Case
No. 10CEJ300108-1, -2, -3, -5)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Jane Cardoza,
Judge.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and
Appellant.

Daniel C. Cederborg, County Counsel, and Brent C. Woodward, Deputy County
Counsel, for Plaintiff and Respondent.

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* Before Kane, Acting P.J., Detjen, J., and Peña, J.

Christine W. (mother) appeals from a juvenile court order terminating her parental rights to her eight-year-old son Ramiro, her six-year-old daughter Emily and her five-year-old daughter C.D. (Welf. & Inst. Code, § 366.26.)¹ Mother contends the juvenile court erred in not applying the exception to adoption set forth in section 366.26, subdivision (c)(1)(B)(i) (hereafter “the beneficial relationship exception”). We affirm.

PROCEDURAL AND FACTUAL SUMMARY

In December 2013, the Fresno County Department of Social Services (department) was notified when mother tested positive for methamphetamine while giving birth to her son Marcus. Mother admitted using drugs the night before she went into labor. The department placed a protective hold on Marcus at the hospital and took mother’s other minor children, then five-year-old Ramiro, four-year-old Emily and three-year-old C.D. and their two-year-old half-brother Jonathan into protective custody.²

The department filed a dependency petition alleging mother’s methamphetamine use and mental health problems placed the children at a substantial risk of abuse and/or neglect. The department also alleged Ramiro S. (father of Ramiro, Emily and C.D.) and Augustine (father of Jonathan) failed to protect the children from mother. The department was unable to determine the identity of Marcus’s father.

This was not the first time the department intervened to protect mother’s children. In 2010, it removed Ramiro, Emily and C.D. from mother’s custody because she was using methamphetamine and suffering from anxiety and depression. The juvenile court provided her reunification services, including substance abuse and mental health services, until October 2011 when the court terminated family reunification services and ordered the children placed with her under family maintenance services. Mother completed her

¹ All statutory references are to the Welfare and Institutions Code.

² Marcus and Jonathan are not subjects of this appeal.

services and in July 2012 the juvenile court terminated its dependency jurisdiction and granted mother joint legal and physical custody of the children.

In March 2014, the juvenile court adjudged all five children its dependents and ordered Jonathan placed with his father. The following August, the court denied mother and Ramiro S. reunification services and set a section 366.26 hearing. The court ordered a minimum of two supervised visits a month for both parents.

In its report for the section 366.26 hearing, the department informed the juvenile court that Ramiro, Emily, and C.D. had been living with their paternal grandparents since December 2013. Marcus was placed there with his half-siblings at the same time and the grandparents wanted to adopt all four children. The department reported that the children appeared to have a significant parent/child relationship with their prospective adoptive parents and looked to them to meet their daily needs. The children did not, according to the department, have a significant parent/child relationship with their parents and therefore, the department opined, it would not be detrimental to terminate parental rights. The department recommended the juvenile court find the children to be adoptable and terminate parental rights.

Mother agreed it was in Marcus's best interest to be adopted but objected to the department's recommendation as to Ramiro, Emily and C.D. (hereafter "the children"). She requested a contested hearing to argue that she and the children had a beneficial relationship and that terminating her parental rights would be detrimental to them.

The juvenile court conducted the contested section 366.26 hearing in August 2015. Nicole, mother's adult daughter, testified that the children were close to mother and father and regarded them as their parents. They were always excited to see them and called mother "Mom." Whenever she saw the children, they asked when they could return to live with mother.

Mother testified that she visited the children twice a month and that they were always excited to see her but never excited to leave. She believed they viewed her as a

parent because they called her “Mommy.” They told her about their school activities and gave her their paperwork from school. Asked how she thought the children would feel if her parental rights were terminated, she said it would impact Ramiro and Emily particularly hard because they were very attached to her. She believed it would be devastating and damaging to the children.

Mother and father’s attorneys argued the beneficial relationship exception applied and that it would be detrimental to the children to terminate parental rights. The juvenile court disagreed. The court found that the children were likely to be adopted and terminated parental rights. In rejecting the argument that the exception applied, the court stated there was “no persuasive evidence that the children would benefit from continuing the relationship and ... no significant parent child relationship.”

This appeal ensued.³

DISCUSSION

Mother contends she established the existence of the beneficial relationship exception and therefore the juvenile court erred by terminating her parental rights. She argues the juvenile court should have ordered legal guardianship. We disagree.

Section 366.26 governs the proceedings at which the juvenile court must select a permanent placement for a dependent child. The express purpose of a section 366.26 hearing is “to provide stable, permanent homes” for dependent children. (§ 366.26, subd. (b).) If the court determines it is likely the child will be adopted, the statute mandates termination of parental rights unless the parent opposing termination can demonstrate that one of the statutory exceptions applies. (§ 366.26, subd. (c)(1)(A) & (B).)

Mother contends the exception found in section 366.26, subdivision (c)(1)(B)(i), i.e. the beneficial relationship exception, applied in her case. The beneficial relationship exception pertains where the evidence supports “a compelling reason for determining that

³ Ramiro S. did not appeal the juvenile court’s termination order.

termination would be detrimental to the child [because] [the parent maintained] regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) “ ‘To trigger the application of the parental relationship exception, the parent must show the parent-child relationship is sufficiently strong that the child would suffer detriment from its termination.’ [Citation.] A beneficial relationship ‘is one that “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” ’ ” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643.)

The nature of the relationship between the parent and child is key in determining the existence of a beneficial relationship; it is not sufficient to show that the child derives some benefit from the relationship or shares some “ ‘emotional bond’ ” with the parent. (*In re K.P.* (2012) 203 Cal.App.4th 614, 621 (*K.P.*).) “To overcome the preference for adoption and avoid termination of the natural parent’s rights, the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) In other words, the parent must show he or she occupies a “ ‘parental role’ ” in the child’s life.’ ” (*K.P.*, *supra*, 203 Cal.App. 4th at p. 621.) Factors to consider include “ ‘[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs. ” ’ ” (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 643.)

The parent has the burden of proving the statutory exception applies. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 252.) The court’s decision a parent has not satisfied this burden may be based on either or both of two component determinations—whether a beneficial parental relationship exists and whether the existence of that relationship constitutes “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B).) When the juvenile court finds the

parent has not established the existence of the requisite beneficial relationship, our review is limited to determining whether the evidence compels a finding in favor of the parent on this issue as a matter of law. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) When the juvenile court concludes the benefit to the child derived from preserving parental rights is not sufficiently compelling to outweigh the benefit achieved by the permanency of adoption, we review that determination for abuse of discretion. (*K.P.*, *supra*, 203 Cal.App.4th at pp. 621-622.)

Mother contends the evidence established that she maintained regular visitation and contact with the children and that they would benefit from continuing the relationship because they were bonded to her. She points out the children lived with her most of their lives and were bonded to her when they were removed. She maintained that bond, she contends, through visitation as evidenced by their excitement in seeing her and repeated requests to go home.

The juvenile court did not expressly find whether mother maintained regular visitation and contact. However, assuming the court found in mother's favor on that issue,⁴ the court was not persuaded that she and the children had a beneficial relationship and that mother filled a parental role. We conclude substantial evidence supports the court's determination. The children had been out of mother's custody for nearly two years. During that time, she visited them twice a month under the supervision of a social worker. It is undisputed that the quality of mother's visits with the children was positive; they were always excited to see her, were affectionate with her and called her "Mommy."

⁴ Before ruling, the juvenile court sought clarification of a statement by the department in its report for the section 366.26 hearing that mother had not visited the children since the case was transferred to the Assessments/Adoption Unit. The department did not specify in its report when that occurred. County counsel explained that the department's statement was not completely accurate and that an addendum report reflected mother visited the children during that timeframe. County counsel advised the court that mother's visitation could be considered regular and submitted the matter.

However, that evidence does not compel a finding mother had a beneficial relationship with them as a matter of law. (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1527.) She was required to show that she filled a parental role and she failed to do so.

Further, there was no evidence that terminating mother's parental rights would be detrimental to the children other than mother's testimony that it would be "devastating" and "damaging" and particularly hard on Ramiro and Emily. Mother did not, for example, offer a bonding study or other evidence showing that termination of parental rights would have a significant detrimental effect on the children's lives. Additionally, the social worker opined in her report that the termination of mother's parental rights would not be detrimental to the children in light of the prospective benefits of security and stability that adoption would provide.

We conclude substantial evidence supported the juvenile court's conclusion that mother failed to establish the existence of the beneficial relationship exception. Consequently, the beneficial relationship exception to adoption does not apply and the juvenile court did not err in terminating mother's parental rights. Thus, we affirm.

DISPOSITION

The August 21, 2015 order terminating mother's parental rights is affirmed.